

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JIMMIE EARL STEPHEN,	)	No. C 08-00957 JW (PR)
Plaintiff,	)	ORDER OF TRANSFER
vs.	)	
R. HERNANDEZ, et al.,	)	
Defendant(s).	)	(Docket Nos. 2, 4, 5 & 9)

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Plaintiff, an inmate currently incarcerated at the California Men's Colony ("CMC") State Prison in San Luis Obispo, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that prison officials at R. J. Donovan Correctional Facility at Rock Mountain ("RJD") in San Diego, California, violated his constitutional rights while plaintiff was housed at RJD.

Venue may be raised by the court *sua sponte* where the defendant has not filed a responsive pleading and the time for doing so has not run. See Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986). When jurisdiction is not founded solely on diversity, venue is proper in (1) the district in which any defendant resides, if all of the defendants reside in the same state; (2) the district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part

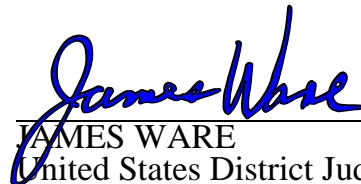
1 of the property that is the subject of the action is situated; or (3) a judicial district in  
2 which any defendant may be found, if there is no district in which the action may  
3 otherwise be brought. See 28 U.S.C. § 1391(b). When venue is improper, the  
4 district court has the discretion to either dismiss the case or transfer it “in the interest  
5 of justice.” See 28 U.S.C. § 1406(a).

6 It is clear from the instant complaint and the attachments thereto that a  
7 substantial part of the events or omissions giving rise to plaintiff’s claims arise out  
8 of actions alleged to have been committed at RJD by RJD officials. RJD is located  
9 in San Diego, California. San Diego is located within the venue of the Southern  
10 District of California. See 28 U.S.C. § 84(d). As a result, venue is proper in the  
11 Southern District of California, not in the Northern District. For the foregoing  
12 reasons, plaintiff’s motion to stay transfer of venue (Docket No. 4) is DENIED.

13 Accordingly, in the interest of justice, the above-titled action is hereby  
14 TRANSFERRED to the United States District Court for the Southern District of  
15 California. In light of the transfer, this Court will defer to the Southern District with  
16 respect to plaintiff’s motions for leave to proceed in forma pauperis (Docket Nos. 2  
17 & 5) and motion for appointment of counsel (Docket No. 9). The clerk shall  
18 terminate as moot Docket Nos. 2, 5 and 9 from this Court’s docket.

19 The clerk shall transfer this matter and close the file.

20  
21 DATED: April 11, 2008

  
JAMES WARE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JIMMIE EARL STEPHEN,  
Plaintiff,

Case Number: CV08-00957 JW

**CERTIFICATE OF SERVICE**

v.

R. HERNANDEZ, et al.,  
Defendants.

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/11/2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jimmie Earl Stephen C 56483  
California Men's Colony State Prison  
P. O. Box 8101  
San Luis Obispo, Ca 93409-8101

Dated: 4/11/2008

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk